

## TAX ADVISORY 99-1

AMCCC-LA

2 February 1999

SUBJECT: DD 2058, State of Legal Residence Certificate and DD 2058-1, State Income Tax Exemption Test

1. PURPOSE: To discuss the requirement for soldiers to recertify their exemption from state income tax withholding.

2. FACTS:

a. Some local finance offices announced that soldiers would be required to recertify their exemption from state income tax withholding before 15 February 1999. Failure to do so would cause the soldier's withholding status to be reported as single with zero exemptions. This would cause finance to withhold the maximum amount required under state law from a soldier's military pay.

b. This information is incorrect. This paper discusses the requirements for certification.

3. DISCUSSION:

a. The laws of the soldier's domicile govern the requirement for soldiers to pay state income taxes on their military pay.

b. Domicile is determined by a soldier's physical contact, either past or present, with a state and the soldier's intent to make that state his or her permanent home.

c. The laws of some states may excuse soldiers from the requirement to have state income taxes withheld from their military pay. To stop withholding, soldiers must file the DD Form 2058-1, or an approved state form. Unless otherwise stated in this paper, once a soldier certifies his or her exemption from state income tax withholding, that soldier has no requirement to recertify. The soldier would only file DD Forms 2058 and 2058-1 again, if that soldier changes his or her domicile.

d. The DD 2058, State of Legal Residence Certificate, is designed to obtain information with respect to a soldier's legal residence/domicile for the purposes of determining the State for which taxes are to be withheld from the soldier's wages. There is no requirement to file this form unless the soldier has changed his or her legal residence/domicile since entering service.

e. The DD 2058-1, State Income Tax Exemption Test, enables soldiers to terminate withholding of state income taxes when the laws of the soldier's legal residence/domicile do not require withholding. The form provides explanatory material designed to help the soldier determine if he or she qualifies to terminate withholding. However, the test provided applies only to New Jersey, New York, and Oregon. Also note that this is a 1980 form. These tests have not been updated since. The soldier should not blindly apply this

test to his or her circumstances. It is necessary for the soldier to look to the laws of his or her legal residence/domicile to determine if withholding is required.

f. Soldiers domiciled in Connecticut must recertify annually for the withholding exemption. The following statement will appear on their December 1998 through February 1999 LES: "RECERTIFY SITW EXEMPTION BY FEB USE CT-W4."

Therefore, Connecticut soldiers must recertify annually by filing a Connecticut (CT) Form W4. Once rectification has occurred, Connecticut soldiers will receive the following statement on his or her LES: "FORM W-4 OR 2058-1 RECEIVED, VERIFY INPUT." Although this statement indicates that a DD 20528-1 is acceptable for Connecticut soldiers to recertify, it is not preferred.

g. Soldiers claiming exemption from State income tax withholding from California, Idaho, Missouri, New Jersey, New York, Ohio, Oregon, Pennsylvania, and Vermont, will have the following remark displayed on their LES from December through February annually: "CURRENTLY YOU CAN CLAIM EXEMPTION FROM STATE TAXES, REVIEW YOUR EXEMPTION STATUS TO BE SURE IT IS CORRECT." This remark is provided as a reminder to review their status to ensure they are being taxed correctly. If their exemption is correct, then no further action is necessary. If incorrect, then the soldier must submit appropriate documentation (DD 2058 and/or DD 2058-1) to update their exemption status.

Questions may be directed to the AMC Tax Center located in room 7E18. Calls should be directed to the Chief of Legal Assistance at Commercial (703) 617-8004 or DSN 767 8004.

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